

PT 98-69

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

SPEICHER POST #499)	
AMERICAN LEGION BUILDING CORP.)	
Applicant)	
)	Docket #95-38-05
v.)	
)	Parcel Index # 11-C-17-31-355-018
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe
OF THE STATE OF ILLINOIS)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Richard Ogibovic, II, Elliott & McClure, P.C., for Speicher Post #499 American Legion Building Corporation.

Synopsis:

The hearing in this matter was held at Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois on December 23, 1997, to determine whether or not Iroquois County Parcel Index No. 11-C-17-31-355-018 qualified for exemption during the 1995 assessment year.

Mr. Paul Johnson, President during the taxable year in question of Speicher Post #499 American Legion Building Corporation (hereinafter referred to as the "Applicant"), was present and testified on behalf of the applicant. Mr. Johnson was also Commander of the affiliated American Legion Post during 1995.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a veteran's organization; and

lastly, whether the parcel was used by the applicant for purposes that were charitable as well as civic and patriotic during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel during all of the 1995 assessment year. It is also determined that the applicant is not a veteran's organization. Finally, it is determined that the applicant did not use the property for charitable purposes, that were also patriotic and civic, during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Iroquois County Parcel Index No. 11-C-17-31-355-018 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Department's Exhibit Nos. 1 through 5. (Tr. p. 11)

2. On December 26, 1995, the Department received a property tax exemption application from the Iroquois County Board of Review for Permanent Parcel Index No. 11-C-17-31-355-018. The applicant had submitted the request, and the board recommended that the Department grant the exemption for the 1995 assessment year. The Department assigned Docket No. 95-38-5 to the application. (Dept. Grp. Ex. No. 2)

3. On January 19, 1996, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on December 23, 1997, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by two warranty deeds dated September 24, 1948, and October 15, 1948. (Dept. Grp. Ex. No. 2 pp. 5-8)

7. The purposes of the applicant, according to the by-laws are:

for social, civic and patriotic purposes. For God and Country, we associate ourselves [sic] together for the following purposes: To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate A [sic] one hundred percent americanism [sic]; to preserve the memories and incidents of our associations in the great wars; to inculcate a sense [sic] of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Applicant's Ex. No. 1 p. 9)

8. Membership in the applicant is determined by the fact that a person is a "paid up" member of Speicher Post #499 American Legion. The board of directors is decided by the positions of Commander, Vice Commander, Adjutant, and Finance Officer of the related American legion post. (Applicant's Ex. No. 1 p. 10; Tr. pp. 12-13)

9. The applicant was formed when the building on the subject parcel was constructed in 1948. The applicant pays the utility bills for the building. The deeds are in the name of the applicant and not the name of the related post. (Tr. pp. 23-24)

10. Located on the subject parcel is a one-story building with a basement. (Dept. Grp. Ex. No. 2 pp.1-3; Tr. pp. 16-17)

11. The basement level of the building contains 2 restrooms, a large meeting room, a storage room, and the furnace room. (Applicant's Ex. No. 1; Tr. p. 17)

12. Located upstairs is another large meeting room, a handicap accessible restroom, a kitchen, and an arms room. (Applicant's Ex. No. 1; Tr. p. 17)

13. During the taxable year in question, the building was used 200 times for various functions including 12 times for Legion meetings, 2 times for CPR classes, 72 times by the Girl Scouts, 3 times for gang (suppression) meetings, once by the Secretary of State, 2 times by the Gilman Library, 12 times by 4-H, 24 times by the Boy Scouts, 2 times by the Chamber of Commerce, once by the County Legion, once for a legion breakfast, 8 times for funeral dinners,

6 times for family dinners, and 54 times for garage sales. (Dept. Ex. No. 2 pp. 1-3; Tr. p. 19)

14. The applicant does not charge rent for the use of the building. The applicant accepts donations from the groups that use the building. Approximately 34% of the groups that used the building in 1995 made a donation to the applicant. (Dept. Ex. No. 2 pp. 1-3; Tr. pp. 18-19)

15. The applicant makes the building available to anyone who wants to use it on a “first-come first-serve” basis. It is requested that anyone that uses the building leave it in the condition it was found. (Tr. pp. 18-20)

16. The applicant requested a property tax exemption from the Department for the 1985 assessment year. The exemption was denied pursuant to Docket No. 85-38-12. (Dept. Ex. No. 2 p. 9; Tr. pp. 24-25)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the

claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

In the case of Northshore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), (hereinafter Northshore) the Supreme Court of Illinois held that the predecessor statute to 35 ILCS 200/15-145³ was constitutional and that the provision granting an exemption to a veteran's organization required the organization's utilization encompass all three of the required uses: civic, patriotic, and charitable. The Court went on to hold that Northshore's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members, necessitated a finding by the Court that the primary use of the property was not exempt.

The Court stated:

In order to qualify its property for exemption the party seeking it must prove that it is the kind of organization or institution described in the applicable exempting statute and that its property is used exclusively for purposes set forth in the act. *Id.* at 234.

The first question before me is whether the applicant is a veteran's organization, as required by the statute. While the affiliated American legion post is surely a veteran's organization, the applicant is a building corporation that holds title to the subject property. It is necessary to recognize that the affiliated American legion post did not hold an ownership interest in the subject parcel. Rather, the deeds establish that the applicant building corporation was vested with legal title to the property. Section 200/15-145 contains the word "of" which

³. **AT THE TIME NORTHSHORE POST NO. 21 WAS DECIDED, THE EXEMPTION FOR VETERANS ORGANIZATIONS WAS FOUND AT ILL. REV. STAT. 1963, CHAP. 120, PAR. 500.18.**

connotes that the provision requires ownership. The applicant is a corporation which holds title to the property and pays the utility bills. It is not a veteran's organization.

The second consideration is whether the property was used by the applicant for charitable, civic, and patriotic uses. When the Supreme Court in Northshore considered the constitutionality of the statute granting the exemption to veteran's organizations, the court stated:

It is our view that the legislature, in enumerating the purposes for which property must be used to render it exempt, meant to use the conjunction "and" in its ordinary sense rather than as a disjunctive conjunction which would permit any one of the three stated uses as being sufficient to exempt the property from tax. Therefore, in order for property of veterans' organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes, but also that such use was patriotic and civic. This is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore, section 19.18 pertaining to veterans' organizations is not unconstitutional. *Id.* at 233-234.

As the foregoing shows, applicant's use of the property must be charitable, civic, and patriotic. Applicant's bylaws state that the purpose of the applicant is "for social, civic and patriotic purposes." The word charitable does not appear in those bylaws.

Whether an institution has been organized and is operating exclusively for purposes which will exempt the property from taxation will be determined from its charter and bylaws and the actual facts relating to its method of operation. DuPage County Bd. Of Review v. Joint Com'n on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995).

A further review of Northshore reveals the circumstances that the court relied upon to find that Northshore's use of the property did not qualify for exemption. Although Northshore alleged that its usage of the property was for charitable, civic, and patriotic purposes, the court disagreed. The court said:

Plaintiff has not shown, however that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops None of these uses are *per se* patriotic and charitable. *Id.* at 235-236. (Emphasis added.)

There are dissimilarities in applicant's activities from those of the applicant in Northshore. However that alone does not authorize the granting of a property tax exemption in this case. I find the facts that the applicant does not operate a bar nor are there any games of chance played on the subject property are not the controlling facts in this situation. The court has stated that the use must be civic, patriotic, and charitable for a veterans' organization to qualify for a property tax exemption.

The applicant uses the property for social purposes when it conducts the meetings, dinners, and other activities it holds on the premises. The applicant has failed to show that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires. Nor has the applicant established that the property is owned by a veterans' organization.

I therefore find that Northshore is the controlling case law regarding the statutory language at issue and that the applicant has failed its burden of proof to qualify for exemption. It is therefore recommended that Iroquois County Parcel Index No. 11-C-17-31-355-018 remain on the tax rolls for the 1995 assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
September 9, 1998